

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN BAL,

Plaintiff,

16-cv-2416 (PKC)

-against-

ORDER

MANHATTAN DEMOCRATIC PARTY, et al.,

Defendant.

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CASTEL, U.S.D.J.


The Court has Mr. Schwartz's ex parte under seal submission in response to the Court's Order of August 29, 2018. Mr. Schwartz's affidavit shall remain under seal but it shall be served on Mr. Bal within 5 days of this Order. Mr. Bal shall have until September 24, 2018 to respond and Mr. Schwartz may reply by October 1,

Mr. Bal is quite correct that events following Mr. Schwartz's filing of a notice of appearance in this action may have relevance to any motion to disqualify but the starting point of a motion to disqualify under Rules 1.7 or 1.18 of the Rules of Professional Conduct is whether Mr. Bal was Mr. Schwartz's client or prospective client on the same or a substantially related matter.

With respect to the assertion that Mr. Schwartz is likely to be a witness on a significant issue of fact (Rule 3.7), it is Mr. Bal's obligation to demonstrate what that issue is, how it relates to the merits of his claim and how he will be prejudiced. Mr. Bal should address these issues in his September 24 submission. See Murray v. Metro. Life Ins. Co., 583 F.3d 173, 178–79 (2d Cir. 2009)("[W]e now hold that a law firm can be disqualified by imputation only if

the movant proves by clear and convincing evidence that [A] the witness will provide testimony prejudicial to the client, and [B] the integrity of the judicial system will suffer as a result.”)

SO ORDERED.


P. Kevin Castel
United States District Judge

Dated: New York, New York
September 4, 2018